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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LAMONT SHEPPARD,

Defendant and Appellant.

B270216

(Los Angeles County
Super. Ct. No. TA034259)

THE COURT:*

Lamont Sheppard appeals from the denial of his request for resentencing pursuant to Proposition 47 (Pen. Code, § 1170.18).¹ We appointed counsel to represent him on this appeal.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist.

* BOREN, P.J., CHAVEZ, J., HOFFSTADT, J.

¹ All further statutory references are to the Penal Code.

We sent a notice to defendant, advising him he had 30 days in which to personally submit any contentions or issues which he wished us to consider. He has submitted a supplemental brief containing three such contentions. Defendant contends his appellate counsel is constitutionally ineffective, his sentence constitutes double punishment and his convictions are void. Filing a *Wende* brief does not constitute ineffective assistance of counsel. Defendant was not convicted of any offense specified in Proposition 47 and so has not shown error in the denial of his motion for resentencing. His claims of void convictions and double punishment are not related to his Proposition 47 resentencing request and are not cognizable on this appeal.

BACKGROUND

In 1996, defendant was convicted by a jury of two counts of willful, deliberate and premeditated attempted murder (§§ 187, 664), one count of assault with a firearm (§ 245, subd. (a)(2)), and one count of negligent discharge of a firearm (§ 246.3). The jury found true the allegations that a principal was armed with a firearm in the commission of the attempted murders and the assault. The jury found not true allegations that defendant personally used a firearm, personally discharged a firearm and personally inflicted great bodily injury. The trial court sentenced defendant to life with the possibility of parole plus a one-year enhancement term for the armed principal enhancement for each attempted murder conviction and to 16 months for the assault conviction and accompanying firearm enhancement, all to run consecutively.

In 2015, defendant filed his request for resentencing pursuant to Proposition 47. He contended that he was entitled to resentencing because the jury found not true the sentencing allegations that he inflicted great

bodily injury on the victims and personally used and discharged a firearm. He further contended that his resulting sentence was clearly erroneous.

The trial court denied defendant's resentencing request "for failure to set forth good cause."

DISCUSSION

1. Ineffective Assistance of Counsel

Defendant contends his counsel's decision to file a *Wende* brief is "automatically" ineffective assistance of counsel and this court has a duty to relieve counsel and appoint new substitute counsel.

"[T]he constitutional right to assistance of counsel entitles an indigent defendant to independent review by the Court of Appeal when counsel is unable to identify any arguable issue on appeal. California's [*Wende*] procedure for securing this right requires counsel to file a brief summarizing the proceedings and the facts with citations to the record, and requires the appellate court to review the entire record to determine whether there is any arguable issue." (*People v. Kelly* (2006) 40 Cal.4th 106, 119.) The United States Supreme Court has approved the *Wende* procedure in *Smith v. Robbins* (2000) 528 U.S. 259. (*People v. Kelly, supra*, 40 Cal.4th at p. 118.) Thus, defendant's appellate counsel did not render constitutionally ineffective assistance simply by filing a *Wende* brief.

An appellate counsel who files a *Wende* brief "may properly remain in the case so long as he has not described the appeal as frivolous and has informed the defendant that he may request the court to have counsel relieved if he so desires." (*People v. Wende, supra*, 25 Cal.3d at p. 442.) Here, defendant's appellate counsel has not described the appeal as frivolous and has informed defendant that he may ask this court to relieve counsel. Thus, we have no basis to remove counsel on our own motion. Even if we construed

defendant's discussion of ineffective assistance of counsel to be a request that counsel be relieved, defendant has not identified a basis for such relief.

2. Sentencing Claims

On appeal, defendant expands the contention he made in the trial court that the jury's not true findings on certain sentencing allegations entitle him to resentencing. He now contends these findings amounted to an implicit acquittal of the attempted murder and assault charges, rendering the attempted murder and assault convictions void. Defendant also adds a second contention, contending he was improperly given two strikes for one act. Neither claim provides a basis for relief under Proposition 47.

Proposition 47 establishes resentencing for persons convicted of violating "Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act." (§ 1170.18, subd. (a).) Defendant's convictions for attempted murder (§§ 187, 664), assault with a firearm (§ 245) and negligent discharge of a firearm (§ 246.3) do not qualify for resentencing under Proposition 47.

Defendant asserts that his contentions are fundamentally claims the trial court acted in excess of its jurisdiction in sentencing him to life in prison and so his sentence may be corrected at any time. Defendant's first contention is simply a claim that the verdicts and the findings on the sentencing allegations are inconsistent. Such inconsistency does not render his convictions void. (See *People v. Lewis* (2001) 25 Cal.4th 610, 656 [inherently inconsistent verdicts or sentencing allegations are allowed to stand].) Defendant's second contention appears to involve the Three Strikes law, but defendant was not sentenced under that law.

3. Independent Review of the Record

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins, supra*, 528 U.S. at pp. 278-282; *People v. Kelly, supra*, 40 Cal.4th at pp. 122-124.)

DISPOSITION

The judgment is affirmed.

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